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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,198	10/31/2001	Jeffrey Erdfarb	12186/1	4144
26304 7590 03/29/2007 KATTEN MUCHIN ROSENMAN LLP 575 MADISON AVENUE NEW YORK, NY 10022-2585			EXAMINER COHEN, AMY R	
			ART UNIT	PAPER NUMBER
			2859	

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/29/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/003,198

Applicant(s)

ERDFARB, JEFFREY

Examiner

Amy R. Cohen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-26 and 29-31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-26 and 29-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 February 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 19 and 31 are objected to because of the following informalities:

Claim 19, line 7 “set of marks on the measuring” should read set of marks on the measuring device.

Claim 31, line 5 on building material should read of building material.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 19-22, 24-26 are rejected under 35 U.S.C. 102(b) as being anticipated by Horning (U. S. Patent No. 1,235,801).

Regarding claims 19 and 20: Horning teaches a method of laying out a first distance, the first distance being related to a first dimension measured on a drawing depicting features at a first scaling ration, the method comprising: determining the first dimension on the drawing in units of a common system of units by comparing the drawing to a first set of marks on a measuring device (Col 2, lines 74-105, Col 3, lines 4-24); comparing the first dimension as shown on the measuring device by the first set of marks to a second set of marks on the measuring device, said second set of marks also corresponding to the common system of units

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(Col 2, lines 74-105, Col 3, lines 4-24), wherein the value of the units of the first set of marks corresponds to the value of the second set of marks by the inverse of the first scaling ratio (Col 2, lines 74-105, Col 3, lines 4-24).

Horning teaches the method wherein a second distance is related to a second dimension measured on a second drawing depicting features at a second scaling ration, comprising the steps of determining the second dimension on the second drawing in units of a common system of units by comparing the drawing to the first set of marks on the measuring device (Col 2, lines 74-105, Col 3, lines 4-24); comparing the second dimension as shown on the measuring device by the first set of marks to a third set of marks (Col 2, lines 74-105, Col 3, lines 4-24), said third set of marks also corresponding to the common system of units wherein the value of the units of the first set of marks corresponds to the third set of marks by the inverse of the second scaling ratio (Col 2, lines 74-105, Col 3, lines 4-24).

Regarding claims 21, 22, 24-26: Horning teaches a device (Fig. 1) for determining a size of an object, the device comprising: a first set of regularly spaced indicia (numerals in belt C which are related to index lines K) used to size the object depicted at a first scale (Fig. 1, Col 2, lines 74-105); marks (K) disposed between the first set of indicia for sizing the object between the indicia (Fig. 1, Col 2, lines 74-105); a second set of regularly spaced indicia (numerals in belt between O and P) corresponding to the first set of indicia, the second set of indicia having a spacing between the indicia related to the first set of indicia by an inverse to the first scale, the second set of indicia not being equivalent to an established measurement system (Fig. 1, Col 2, lines 74-105); marks (L) disposed between second set of indicia for sizing the object (Fig. 1, Col 2, lines 74-105).

Horning teaches the measurement device being adapted for determining a size of an object when the object is depicted at a second scale, the device comprising: a third set of regularly spaced indicia (numerals in belt between N and O) corresponding to the first set of indicia, the third set of indicia having a spacing between the indicia related to the first set by an inverse to the second scale, the third set of indicia not being equivalent to an established measurement system (Fig. 1, Col 2, lines 74-105); marks (L) disposed between the third set of indicia for sizing the object (Fig. 1, Col 2, lines 74-105).

Horning teaches the measurement device wherein the first set of indicia comprise numerical values and the second set of indicia comprise numerical values (Fig. 1, Col 2, lines 74-105).

Horning teaches the measurement device wherein the first and second set of indicia have a starting point adjacent to each other (Fig. 1, Col 2, lines 74-105).

Horning teaches the measurement device wherein the scale corresponds to one of an engineering and architectural scale (Col 1, lines 9-17, Col 3, lines 4-24).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 13-18, 23, 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Horning in view of Simmons (U. S. Patent No. 5,884,408).

Regarding claims 13-18, 23, 29, 30: Horning discloses the measurement device as described above in paragraph 3; wherein the first set of indicia are located on a first side of the measurement device (Fig. 1, inches scales D and K are located on both sides of the measurement device) and a second set of indicia (M) are located on a second side of the measurement device (Fig. 1); wherein the third set of indicia (L) are located on the same side of the measurement device as the second set of indicia (Fig. 1).

Horning does not disclose the measuring device comprising a housing; wherein the measuring device is a tape measuring device.

Simmons discloses a measuring device comprising a housing (30); wherein the measuring device is a tape measuring device (Col 2, lines 1-11, Col 2, line 60-Col 3, line 23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the measuring device of Horning be a tape measuring device, as taught by Simmons, since Simmons discloses that a flat ruler and a tape measure are different but equivalent means of providing measurement indicia for measuring objects (Simmons, Col 2, lines 1-11, Col 2, line 60-Col 3, line 23).

Regarding claim 31: Horning discloses a measurement device for determining a size of a feature of a building plan, the device comprising: a measurement device having a first side and a second side (Fig. 1), each side having a first and second edge (Fig. 1); a first set of regularly spaced marks (D, E) along a first edge of the first side (Fig. 1, Col 1, lines 37-49), the marks denoting fractions of an whole inches (Fig. 1, Col 1, lines 37-49), and usable for laying out dimensions of building material for building according to the building plan (Col 1, lines 9-17, Col 3, lines 4-24); a second set of regularly spaced marks (L, M) located on a first edge of the

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second side of the measurement device (Fig. 1, Col 2, lines 74-105), the marks including indicia at regular intervals of marks (Fig. 1, Col 2, lines 74-105), said indicia relate the second set of marks to the first set of marks by a scale ratio (Fig. 1, Col 2, lines 74-105), wherein said scale ratio corresponds to a scale ratio on said plans and measurement of the feature on said building plan using said second set of marks indicates a dimension of said feature to be built using said first set of marks (Col 1, lines 9-17, Col 3, lines 4-24).

Horning does not disclose the measuring device wherein the measuring device is a tape measuring device.

Simmons discloses a measuring device wherein the measuring device is a tape measuring device (Col 2, lines 1-11, Col 2, line 60-Col 3, line 23).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the measuring device of Horning be a tape measuring device, as taught by Simmons, since Simmons discloses that a flat ruler and a tape measure are different but equivalent means of providing measurement indicia for measuring objects (Simmons, Col 2, lines 1-11, Col 2, line 60-Col 3, line 23).

Response to Arguments

6. Applicant's arguments with respect to claims 13-26, 29-31 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The following teach measurement devices Noel (U. S. Patent D503,637) and Fisher (U. S. Patent No. 5,746,001).

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amy R. Cohen whose telephone number is (571) 272-2238. The examiner can normally be reached on 8 am - 5 pm, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego F. Gutierrez can be reached on (571) 272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ARC
March 27, 2007


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